

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE REVISED RULES ON

SUBSTITUTION OF DISTRICT JUDGES

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O R D E R

Pursuant to the power placed in this Court by Article VII, Section 2 of the Montana Constitution, the Court has established rules for the substitution of district judges, which are now codified at § 3-1-804, MCA. The Court last revised the rules in 1995.

The Court has now prepared proposed revised rules for substitution of district judges. The primary purpose of the revised rules is to make the rules easier to read and understand. In addition, the revised rules restate the times within which a motion for substitution must be filed in both civil and criminal cases. The Court also is considering eliminating the right to substitute a district judge when a new trial has been ordered by the district court. That provision is set forth as subsection (11) of the attached proposed revised rules.

IT IS NOW ORDERED that this Court will accept written public comments on the attached proposed revised rules for substitution of district judges. Each person submitting comments shall file an original and 7 copies of his or her comments with the Clerk of this Court on or before 5:00 p.m. on June 22, 2009.

IT IS FURTHER ORDERED that copies of this Order with the attached proposed revised rules be electronically published on the State Bar of Montana website, <http://www.montanabar.org>, and on the website for the Judicial Branch, <http://www.courts.mt.gov>.

IT IS FURTHER ORDERED that the Clerk shall serve this Order with the attached proposed revised rules on each district judge of the State of Montana, the Montana Trial Lawyers Association, the Montana Association of Criminal Defense Lawyers, the Office of Public Defender, the Montana County Attorneys' Association, the

Montana Association of Criminal Defense Lawyers, the Code Commissioner and Director of Legal Services for the Montana Legislative Services Division, and the President of the State Bar of Montana.

DATED this 22nd day of May, 2009.

For the Court,

By /S/ MIKE McGRATH

3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts. It does not apply to any judge sitting as a water court judge or to a workers' compensation court judge.

(1) Each adverse party is entitled to one substitution of a district judge.

(a) In a civil action, a motion for substitution by the party filing the action must be filed within 30 calendar days after the district judge is assigned. A motion for substitution by the party served must be filed within 30 calendar days after service has been made.

(b) In a criminal action, a motion for substitution by the prosecution must be filed within 10 calendar days after the district judge is assigned. A motion for substitution by the defendant must be filed within 10 calendar days after the defendant makes an initial appearance in the district court.

(2) (a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge to whom the case is assigned on the face of the original and all copies of that document.

(b) A motion for substitution of a district judge shall be made by filing a written motion with the clerk, as follows:

The undersigned hereby moves for substitution of District Judge _____
in this case.

The moving party shall serve copies of the motion for substitution upon all other parties to the proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a substitution, the first district judge to whom the case was assigned.

(3) In civil cases, the motion for substitution shall not be effective for any purpose unless the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court. No filing fee is required in criminal cases.

(4) Any motion for substitution which is not timely filed is void. The district judge for whom substitution is sought shall have jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall make an order declaring the motion void.

(5) After a timely motion has been filed, the substituted district judge shall have no power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10) below.

(6) The first district judge who has been substituted or disqualified for cause shall have the duty of calling in all subsequent district judges. In a multi-judge district, all other district judges in that district shall be called before a district judge from another district is called.

(7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or party of record. A certificate of service shall be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any action removes himself or herself, or if a new district judge assumes jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to parties who have previously obtained a substitution. The time periods shall run anew from the date of service of notice or other document identifying the new district judge.

(9) After the time has run as to the original parties to the proceeding, no party who is joined or intervenes shall have any right of substitution, except as provided herein. A third party defendant, who is not an original party in the case, may have a right of one substitution. That motion must be filed within 30 calendar days after the service upon the third party defendant of a third party complaint.

(10) A district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters which do not go to the merits of the case, if the district judge in jurisdiction authorizes the same.

(11) When a new trial is ordered by the district court, each adverse party shall be entitled to one motion for substitution of district judge. Such motion must be filed, with the required filing fee, within 20 calendar days after the district court has ordered a new trial.

(12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party shall be entitled to one motion for substitution of district judge. Such motion must be filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with the district court. No other right of substitution shall arise in cases remanded by the supreme court.

In criminal cases, no right of substitution shall arise when the cause is remanded for resentencing.